



February 18, 2004

ENGROSSED HOUSE BILL No. 1203

DIGEST OF HB 1203 (Updated February 16, 2004 9:20 pm - DI 77)

Citations Affected: IC 14-8; IC 14-34; noncode.

Synopsis: Coal mine reclamation permit bonds. Authorizes the director of the department of natural resources to: (1) initiate an application for the release of a reclamation plan performance bond; and (2) require operators to withdraw from the surface coal mine reclamation bond pool under certain circumstances. Allows a mine operator to withdraw from the bond pool upon replacing bond pool liability with bonds acceptable under the surface coal mining and reclamation bonding law. Amends membership and appointment authority of the surface coal mine reclamation bond pool committee. Requires certain findings and documentation for certain mine land reclamation projects funded by a governmental entity. Amends definition of "government financed construction".

Effective: July 1, 2004.

Frenz, Lytle, Mangus, Chowning

(SENATE SPONSORS — WEATHERWAX, LEWIS)

January 13, 2004, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

January 29, 2004, amended, reported — Do Pass.

February 2, 2004, read second time, ordered engrossed.

February 3, 2004, engrossed.

February 5, 2004, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 9, 2004, read first time and referred to Committee on Natural Resources.

February 17, 2004, amended, reported favorably — Do Pass.

C
o
p
y

EH 1203—LS 6983/DI 77+



February 18, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1203

A BILL FOR AN ACT to amend the Indiana Code concerning
natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-8-2-117.3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 117.3. "Governmental
3 entity", for the purposes of IC 14-22-10-2, ~~and~~ IC 14-22-10-2.5, **and**
4 **IC 14-34-19-15**, has the meaning set forth in IC 14-22-10-2(a).
- 5 SECTION 2. IC 14-34-6-7 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. **(a)** After a permit is
7 issued, the permittee may apply to the director for the release of all or
8 part of the bond or deposit. As part of the bond release application, the
9 permittee must do the following:
- 10 (1) Submit copies of letters that the permittee has sent by certified
11 mail to:
- 12 (A) adjoining property owners;
13 (B) local government bodies;
14 (C) planning agencies;
15 (D) sewage and water treatment authorities; or
16 (E) water companies;
17 in the county in which the surface coal mining and reclamation

EH 1203—LS 6983/DI 77+



C
o
p
y

operation is located notifying the entities of the bond release application.

(2) Within thirty (30) days after filing the bond release application, submit a copy of an advertisement placed at least one (1) time a week for four (4) successive weeks in a newspaper of general circulation in the county in which the surface coal mining and reclamation operation is located. The advertisement must contain the following:

- (A) A notification of the precise location of the land affected.
- (B) The number of acres.
- (C) The permit and the date of approval.
- (D) The amount of the bond filed and the part sought to be released.
- (E) The type and appropriate dates of reclamation work performed.
- (F) A description of the results achieved relating to the operator's approved reclamation plan.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section and section 8 of this chapter.

SECTION 3. IC 14-34-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) This section applies to the following:

- (1) A person with a legal interest that might be adversely affected by release of a bond.
- (2) The responsible officer or head of a federal, state, or local governmental agency that:
 - (A) has jurisdiction by law or special expertise with respect to an environmental, a social, or an economic impact involved in the operation; or
 - (B) may develop and enforce environmental standards with respect to those operations.

(b) A person described in subsection (a) may do the following:

- (1) File written objections to the proposed release from bond with the director.
- (2) Request a public hearing within thirty (30) days after the last publication of the ~~permittee's~~ notice required by section 7 of this chapter.

SECTION 4. IC 14-34-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) As used in this

C
o
p
y



section, "mining" includes contract mining.

(b) As used in this section, "operator" includes a predecessor in interest, subsidiaries, and affiliates as approved by the director.

(c) Participation in the bond pool is open to each operator applying for a permit under this article who, after May 3, 1978, has a five (5) year history of mining within Indiana and who meets the following conditions:

(1) Is not subject to an outstanding cessation order issued under:

(A) IC 13-4.1-11-5 (before its repeal); or

(B) IC 14-34-15-6.

(2) Does not owe a civil penalty under:

(A) IC 13-4.1-12 (before its repeal);

(B) IC 14-34-16; or

(C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).

(3) Does not:

(A) owe a fee:

(i) under IC 13-4.1 (before its repeal);

(ii) under this article; or

(iii) collected under the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or

(B) have a history of delinquency in the payment of fees or civil penalties.

(4) Has never been suspended under:

(A) IC 13-4.1-6.5-6 (before its repeal); or

(B) section 6 of this chapter.

(d) Participation in the bond pool is:

(1) optional for each permit application;

(2) subject to approval by the director; and

(3) not effective until the entrance fee has been paid in full.

(e) The director may, based on all available information, disapprove an application that may create an unreasonable risk to the bond pool.

(f) This chapter does not preclude compliance with IC 14-34-6 instead of participation in the bond pool before commencement of participation in the bond pool.

(g) Commencement of participation in the bond pool for the applicable permit constitutes an irrevocable commitment to participate in the bond pool for the applicable permit for the duration of the surface coal mining operations covered under the permit, **unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.**

(h) An operator may apply for participation in the bond pool on a

C
o
p
y



bond increment area under an existing permit. Commencement of participation in the bond pool for the bond increment area, within an existing permit, constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit, **unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.**

SECTION 5. IC 14-34-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) Subject to subsection ~~(b)~~, **(c)**, an operator is suspended from the bond pool if the operator:

(1) fails to pay a fee or civil penalty under:

(A) IC 13-4.1 (before its repeal);

(B) this article; or

(C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or

(2) receives a cessation order that is not abated.

(b) If the final release of a bond has not been obtained within ten (10) years after the date of the last required report of the affected area for the permit, including new disturbances, the director may require the operator to:

(1) replace the bond pool liability with bonds acceptable under IC 14-34-6-1; and

(2) withdraw that operation from the bond pool.

If the operator fails to comply with the director's order to withdraw a mine area from the bond pool, the director may suspend the operator from the bond pool.

(c) An operator is not suspended from the bond pool if the director makes a written determination that mitigating circumstances are present that would not create an unreasonable risk to the bond pool if the operator's participation continues.

~~(c)~~ **(d)** An operator who is suspended from the bond pool shall cease all surface coal mining operations until the operator furnishes a new performance bond under IC 14-34-6-1 in an amount calculated under IC 14-34-6-2 for all disturbed areas and proposed additional mining areas under the permit. When the new performance bond has been executed, the bond pool has no additional liability for reclamation on any part of the area covered by the applicable permit.

SECTION 6. IC 14-34-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The surface coal mine reclamation bond pool committee is established. The committee consists of the following:

(1) Five (5) members ~~not more than three (3)~~ of whom may

C
o
p
y



1 ~~belong to the same political party,~~ appointed by the ~~governor~~
2 ~~director~~ as follows:

3 (A) Three (3) members must represent a cross-section of coal
4 operators.

5 (B) One (1) member must be a member of the commission.

6 (C) One (1) member must be a representative of the public
7 with a ~~license as a certified public accountant.~~ **knowledge of**
8 **reclamation performance guarantees.**

9 (2) The director or the director's designee, who is a nonvoting
10 member.

11 (b) The term of each member is four (4) years beginning July 1. ~~A~~
12 ~~member may not be appointed to more than two (2) full terms.~~ The
13 ~~governor director~~ may remove an appointed member for cause.

14 (c) The committee shall do the following:

15 (1) Annually elect a chairman.

16 (2) Adopt rules for organization and procedure.

17 (d) Each member of the committee who is not a state employee is
18 entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b).
19 The member is also entitled to reimbursement for traveling expenses
20 and other expenses actually incurred in connection with the member's
21 duties as provided in the state travel policies and procedures
22 established by the Indiana department of administration and approved
23 by the budget agency.

24 (e) The committee shall, acting in an advisory capacity to the
25 director, do the following:

26 (1) Meet as necessary to perform duties under this chapter, but not
27 less than ~~two (2) times~~ **one (1) time** each year, for the purpose of
28 formulating recommendations to the director concerning
29 oversight of the general operation of the bond pool.

30 (2) Review and make recommendations concerning the following:

31 (A) All proposed expenses from the bond pool.

32 (B) All applications for admission to the bond pool.

33 (f) The director shall report ~~semiannually~~ **annually** to the committee
34 and to the governor on the status of the bond pool.

35 SECTION 7. IC 14-34-19-15 IS ADDED TO THE INDIANA
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2004]: **Sec. 15. (a) This section applies to the**
38 **following:**

39 **(1) When the department is considering a mine land**
40 **reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3**
41 **that is:**

42 **(A) at least fifty percent (50%) funded by funds**

C
o
p
y



appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds; or

(B) less than fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and this chapter.

Government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments are not considered funds appropriated by a governmental entity under this subdivision. (2) When the level of funding for the construction will be less than fifty percent (50%) of the total cost because of planned coal extraction.

(b) The department must make the following determinations:

(1) The likelihood that coal will be mined under a surface coal mining and reclamation operations permit issued under this article. The determination must consider available information, including the following:

(A) Coal reserves from existing mine maps or other sources.

(B) Existing environmental conditions.

(C) All prior mining activity on or adjacent to the site.

(D) Current and historical coal production in the area.

(E) Any known or anticipated interest in mining the site.

(2) The likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) The likelihood that reclamation activities at the site might adversely affect nearby mining activities.

(c) If a decision is made to proceed with the reclamation project, the department must make the following determinations:

(1) The limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption under IC 14-34-1-2 and 312 IAC 25-2-3.

(2) The delineation of the boundaries of the abandoned mine lands reclamation project.

(d) The following documentation must be included in the abandoned mine lands reclamation case file:

**C
o
p
y**



(1) Determinations made under subsections (b) and (c).

(2) The information taken into account in making the determinations.

(3) The names of the persons making the determinations.

(e) The department must do the following for each project:

(1) Characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance.

(2) Ensure that the reclamation project is conducted according to provisions of 30 CFR Subchapter R, this chapter, and applicable procurement provisions to ensure the timely progress and completion of the project.

(3) Develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures.

(4) Require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.

(f) The contractor must obtain a surface coal mining and reclamation operations permit under this article for any coal extracted beyond the limits of the incidental coal specified in subsection (c)(1).

SECTION 8. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding 312 IAC 25-1-57, "government financed construction" means construction that is:

(1) at least fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds; or

(2) less than fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds if construction is undertaken as an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) and IC 14-34-19.

However, construction through government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments do not qualify as government financed construction.

(b) Before July 1, 2006, the department of natural resources shall amend 312 IAC 25-1-57 to correspond with this SECTION.

(c) This SECTION expires July 1, 2007.

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1203, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-8-2-117.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 117.3. "Governmental entity", for the purposes of IC 14-22-10-2, ~~and~~ IC 14-22-10-2.5, **and IC 14-34-19-15**, has the meaning set forth in IC 14-22-10-2(a).".

Page 4, after line 33, begin a new paragraph and insert:

"SECTION 6. IC 14-34-19-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15. (a) This section applies to the following:**

(1) When the department is considering a mine land reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3 that is:

(A) at least fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds; or

(B) less than fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and this chapter.

(2) When the level of funding for the construction will be less than fifty percent (50%) of the total cost because of planned coal extraction.

(b) The department must make the following determinations:

(1) The likelihood that coal will be mined under a surface coal mining and reclamation operations permit issued under this article. The determination must consider available information, including the following:

(A) Coal reserves from existing mine maps or other sources.

(B) Existing environmental conditions.

**C
o
p
y**



- (C) All prior mining activity on or adjacent to the site.
- (D) Current and historical coal production in the area.
- (E) Any known or anticipated interest in mining the site.
- (2) The likelihood that nearby mining activities at the site might create new environmental problems or adversely affect existing environmental problems at the site.
- (3) The likelihood that nearby mining activities at the site might adversely affect nearby mining activities.
- (c) If a decision is made to proceed with the reclamation project, the department must make the following determinations:
 - (1) The limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption under IC 14-34-1-2 and 312 IAC 25-2-3.
 - (2) The delineation of the boundaries of the abandoned mine lands reclamation project.
- (d) The following documentation must be included in the abandoned mine lands reclamation case file:
 - (1) Determinations made under subsections (b) and (c).
 - (2) The information taken into account in making the determinations.
 - (3) The names of the persons making the determinations.
- (e) The department must do the following for each project:
 - (1) Characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance.
 - (2) Ensure that the reclamation project is conducted according to provisions of 30 CFR Subchapter R, this chapter, and applicable procurement provisions to ensure the timely progress and completion of the project.
 - (3) Develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures.
 - (4) Require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.
- (f) The contractor must obtain a surface coal mining and reclamation operations permit under this article for any coal extracted beyond the limits of the incidental coal specified in subsection (c)(1)."

C
O
P
Y



Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1203 as introduced.)

BISCHOFF, Chair

Committee Vote: yeas 12, nays 0.

**C
o
p
y**



COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred House Bill No. 1203, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 6. IC 14-34-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The surface coal mine reclamation bond pool committee is established. The committee consists of the following:

(1) Five (5) members ~~not more than three (3) of whom may belong to the same political party~~, appointed by the ~~governor~~ **director** as follows:

(A) Three (3) members must represent a cross-section of coal operators.

(B) One (1) member must be a member of the commission.

(C) One (1) member must be a representative of the public with ~~a license as a certified public accountant~~ **knowledge of reclamation performance guarantees.**

(2) The director or the director's designee, who is a nonvoting member.

(b) The term of each member is four (4) years beginning July 1. ~~A member may not be appointed to more than two (2) full terms. The governor director may remove an appointed member for cause.~~

(c) The committee shall do the following:

(1) Annually elect a chairman.

(2) Adopt rules for organization and procedure.

(d) Each member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) The committee shall, acting in an advisory capacity to the director, do the following:

(1) Meet as necessary to perform duties under this chapter, but not less than ~~two (2) times~~ **one (1) time** each year, for the purpose of formulating recommendations to the director concerning oversight of the general operation of the bond pool.

(2) Review and make recommendations concerning the following:

(A) All proposed expenses from the bond pool.

C
o
p
y



(B) All applications for admission to the bond pool.

(f) The director shall report ~~semiannually~~ **annually** to the committee and to the governor on the status of the bond pool."

Page 5, between lines 13 and 14, begin a new line block indented and insert:

"Government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments are not considered funds appropriated by a governmental entity under this subdivision."

Page 5, line 28, delete "at the site".

Page 5, line 31, delete "nearby mining" and insert "**reclamation**".

Page 6, after line 21, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding 312 IAC 25-1-57, "government financed construction" means construction that is:

(1) at least fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds; or

(2) less than fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds if construction is undertaken as an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) and IC 14-34-19.

However, construction through government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments do not qualify as government financed construction.

(b) Before July 1, 2006, the department of natural resources shall amend 312 IAC 25-1-57 to correspond with this SECTION.

(c) This SECTION expires July 1, 2007."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1203 as printed January 30, 2004.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 6, Nays 0.

**C
O
P
Y**

